IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.3894 OF 2005

Smt.Champaben Bhupendra Patel & Ors. : Petitioners
(Orig. Plaintiffs)

V/s.

Mr.Bernand Anton Nunes : Respondent
(Orig. Defendant)

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Mr.B.D.Joshi for the petitioners.

Mrs.Varsha Palav for the respondent.

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CORAM : S.A. BOBDE, J.

July 15, 2005.

P.C.:

1. Rule, returnable forthwith.

Mrs.Varsha Palav, learned counsel, appears and waives service of rule on behalf of the respondent.

Heard by consent.

2. The petitioners are the plaintiffs. They have filed a suit for a declaration that they are in possession of land survey no.59/6, admeasuring 49 ares, situate at village Samarvarni. In the suit, they applied for a temporary injunction. The trial Court rejected the application for

temporary injunction. They, therefore, preferred an appeal before the appellate Court. The appellate Court has concurred with the trial Court. Against that, the present petition is filed. I see no reason to interfere with the order of the appellate Court in view of a clear and categorical finding of both the Courts below that under the Dadra and Nagar Haveli Land Reforms Regulation, 1971, in particular section 3, which deals with extinguishments of concessions, an order was passed regarding occupancy rights on 25.1.1978. These occupancy rights were granted by the order in favour of the respondent. The contention of the petitioners that they had not participated in the proceedings and that the order was passed behind their back has been found to be incorrect since the order itself shows that Bhupendra Haribhai i.e. the father of the petitioner had, in fact, participated in the proceedings. Not only this, Bhupendra Haribhai had made statements before the Land Reforms Officer that he is cultivating the suit land for the last ten years. After a detailed inquiry, the Land Reforms Officer has negatived Bhupendra Haribhai’s contention. The petitioners admittedly claim through them.

3. Mr.Joshi, learned counsel for the petitioners, strenuously and vehemently contended that the respondent

has himself written a letter sometime in the year 1995 stating that his name be deleted in regard to his occupancy rights. This allegation has been denied by the respondent who is about 70 years of age and has stated that this letter was obtained by misrepresentation. In any case, such a letter cannot supersede the order passed after hearing all sides in the year 1978.

4. The last contention of Mr.Joshi, the learned counsel for the petitioners, is that the respondent has also executed a Power of Attorney in the petitioners' favour to sell the land. I do not see how this Power of Attorney supports the petitioners' prayer for granting an injunction. The Power of Attorney, if genuine, is obviously a document which empowers the petitioners to sell the land and does not confer any occupancy rights on them.

5. It was also urged on behalf of the petitioners that the 7/12 extracts from 1975 to 2001 show the petitioners' possession. The defence of the respondent seems to be that the petitioners were engaged by the respondent. Therefore, in any case, all this evidence has been appreciated by the Courts below while dismissing the application for temporary injunction.

6. There is no jurisdictional error or other infirmity in the order. I see no reason to interfere with the impugned order in exercise of the jurisdiction under Article 227 of the Constitution of India. The petition is, therefore, dismissed. The trial Court is directed to dispose of the suit, as expeditiously as possible, and, in any case, not later than six months from today. The trial Court shall decide the matter uninfluenced by any observations in the interlocutory proceedings, including any observations made by this Court in this Writ Petition.

7. The rule stands discharged.

S.A. BOBDE, J.